

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE) MDL NO. 1456
LITIGATION) Civil Action No. 01-12257-PBS
)
)
THIS DOCUMENT RELATES TO THE)
MASTER CONSOLIDATED CLASS ACTION)

**SUPPLEMENTAL AFFIDAVIT OF MIRIAM SULLIVAN IN SUPPORT OF
NON-PARTY TUFTS ASSOCIATED HEALTH PLANS, INC.'S
MOTION FOR PROTECTIVE ORDER**

I, Miriam Sullivan, hereby state the following in order to supplement the statements I made in my Affidavit of November 25, 2005 in support of Tufts Associated Health Plans, Inc.'s ("Tufts Health Plans")¹ Motion For Protective Order:

1. Since the time that I submitted my Affidavit dated November 25, 2005, I have had an opportunity to review the proposed "narrowed" list of documents sought by Dey, Inc., set forth in writing as Schedule A to its counsel's letter of November 28, 2005.
2. I have had an opportunity to perform an assessment of the resources that would be required to retrieve, sort, organize, and review the documents called for by this "narrowed" list, and to assess the business problems that would be created by requiring production in the next few months.
3. I submit this Supplemental Affidavit to describe what would be required to comply with the proposed "narrowed" list, and the challenges that such compliance would pose to Tufts Health Plans.

¹ Tufts Associated Health Plans, Inc. is essentially the operations arm of Tufts Health Maintenance Organization, Inc. ("TAHMO") as well as the TAHMO subsidiaries that offer health plans and that have contracts with providers. For ease of reference, I will refer to these entities collectively as "Tufts Health Plans."

The Types of Documents Maintained by Tufts Health Plans

4. Tufts Health Plans have been offering health insurance products to employers and individuals in Massachusetts since 1981. Tufts Health Plans' current enrollment is approximately 613,000 members.

5. According to our most recent provider directory, Tufts Health Plans currently contract with 20,000 health care service providers and 85 hospitals. Over the fourteen year period covered by the Dey, Inc. subpoena, Tufts Health Plans have well over 65,000 such contracts, including individual physician contracts.

6. Tufts Health Plans receive and process approximately 630,000 coverage claims each month, and they receive at least 38,000 telephone queries each month. These telephone queries, which are contemporaneously documented, may come from members, providers, or any third party at all. They are not stored by subject matter, and there is no mechanism by which to search for particular queries by subject matter.

7. Tufts Health Plans' business operations are overseen by more than fifteen (15) committees, ranging from the Pharmacy and Therapeutics Committee to the annual medical budget planning committees. These various committees meet regularly throughout each year, and minutes are regularly taken and maintained. Committee members typically review materials before each meeting, and generate follow up documents. To determine whether any particular committee may have considered or discussed a physician concern about drug reimbursement would require us to review

every piece of documentation ever generated in the past fourteen years in connection with the work of our committees.

8. For both business and legal reasons, the documentation that supports the above-described activities is extensive. In any given year, Tufts Health Plans easily receive and generate, collectively, hundreds of thousands of documents in the course of its normal operations. Production of documentation reflecting fourteen years of business operations involves the retrieval, organization, and sorting of at least 1.7 million documents.

Current Priority Business Needs

9. The Allied Health and Pharmacy Services staff at Tufts Health Plans are currently preparing for a number of upcoming regulatory and business deliverables. The first includes the post implementation work required by the newly created Medicare Part D pharmacy benefit that became effective January 1, 2006. The Center for Medicare and Medicaid ("CMS") has strict requirements and timelines for updating and evaluating changes to our clinical formularies, extensive requirements involving report submission and data exchange as well as implementation of a member-specific medication therapy management program. In addition, evaluation and assessment work associated with changes to clinical programs and benefit design changes effective January 1, 2007 must also be completed in advance of the spring 2006 deadline imposed by CMS.

10. Concurrently, the staff must prepare for the triennial and biennial site visits by National Committee on Quality Assurance ("NCQA") and CMS respectively. Although the entire survey preparation involves staff from throughout the organization there is significant preparation that is the responsibility of the Allied Health and

Pharmacy Services personnel. Due to the nature of the documentation request the same subset of staff will be required to search for and evaluate the contents of said documents because of their familiarity with the materials and the subject matter. Their involvement in this documentation collections process would require that they cease working on these and other key initiatives in order to comply with the documentation request.

The Burden Imposed By Dey, Inc.'s "Narrowed" Document Request

11. Although Dey, Inc.'s "narrowed" document request does reduce the number of categories of documents sought, the requests themselves are worded so broadly and subjectively that, in some instances, they cover all of the documents we maintain in an entire department. In some instances, we are left to guess what sort of documents would be responsive. Also, many of the "narrowed" requests seek categories of information that do not correspond to the way in which documents are kept and/or stored, at Tufts Health Plan. In these cases, to look for responsive documents would require Tufts Health Plan personnel to search through many departments' files and archives to determine whether any such documents may somewhere exist. Accordingly, many of Dey, Inc.'s "narrowed" requests, if not further refined, would call upon us to retrieve and review nearly all of the documents that Tufts Health Plan maintains in order to determine whether any of them contain possibly responsive information.

12. For example, rather than limiting its request to objectively ascertainable documents such as the fee schedules that reflect the actual reimbursement rates for physician administered drugs, Dey, Inc. appears to seek any documents in Tufts Health Plans' possession, custody, or control that reflect the way in which Tufts Health Plan personnel ever *thought* about the issue of reimbursement.

For example, Request 1 seeks documents that "concern the methodology used to determine reimbursement or payment rates" over the past fourteen years; Request 3 seeks documents that "detail how [the fee schedules] were calculated or derived" during that time period; Request 7 seeks documents "regarding or reflecting any consideration of or actual changes in" our reimbursement for drugs or services "based on, or by reference to, changes in Medicare's reimbursement rates for drugs or services since 2003;" and Request 12 seeks documents "reflecting any controls, measures, studies or benchmark comparisons considered or implemented by You to manage the costs of reimbursements for physician administered drugs."

13. In addition, Dey, Inc. seeks "all documents concerning your contractual relationships with Providers [for the past fourteen years] insofar as they cover reimbursement for the administration of drugs...including without limitation master agreements, addenda, schedules, attachments, requests for proposal, and responses to requests for proposal." (Request 4). I would estimate that the number of such contracts referencing AWP to be close to 4,000.

Many of our Provider contracts simply refer to the fee schedules when addressing drug reimbursement. Accordingly, it is not clear why the defendants would require Provider contracts at all. Because, since at least 1997, the formulae for payment of services widely vary, however, this document request could conceivably require Tufts Health Plans to review each of the thousands of Provider contracts for the last fourteen years to determine which might contain responsive information within it.

In addition, the terms under which we pay Providers for services is perhaps the most confidential and competitively sensitive information in our company. It would be

particularly harmful to Tufts Health Plans' business if we were required to turn this information over to our competitors.

14. Dey, Inc. has also asked Tufts Health Plan to produce documents that concern any communications with physicians over the past fourteen years on the subject of drug costs and reimbursement rates—whether these communications took on a formalized structure or otherwise: In Request 6, Dey, Inc. has asked that Tufts Health Plan produce all documents that concern "advisory boards...involving physicians or pharmacists that reflect concerns from Providers regarding reimbursement to them," and in Request 9, Dey, Inc. has asked for "all documents, including communications between [Tufts Health Plans] and providers" regarding drug costs, reimbursement rates, Tufts Health Plans' "understanding" of the difference between reimbursement rates and Provider's drug costs, and Tufts Health Plan's "intention or fact" that drug reimbursement acts as a cross-subsidy for other reimbursements that are "inadequate or were perceived by physicians to be inadequate."

Tufts Health Plan simply does not maintain its files in a manner that would allow us to make a sensible form of search for such documents. Communications with physicians may occur through formal channels, or, more typically, may occur on an ad hoc basis. We would have to comb through hundreds of thousands of documents to determine whether any in our system contain the type of information requested.

15. Dey, Inc. has also insisted that we provide information about a "narrowed" list of drugs which includes both oral and physician administered drugs. (Please see the attached chart, that analyzes the drug list provided by Dey, Inc., and that shows which of those drugs are sold to patients at a pharmacy). It is my understanding that this case

concerns physician administered drugs only. I have reviewed the Subject Drug list attached to the most recent Consolidated Order re: Class Certification. The Court's Subject Drug list is sharply narrower than the "narrowed" list provided by Dey, Inc., although even the Court's Subject Drug list may include at least eight drugs that are orally administered by patients rather than administered by physicians. I am informed that the Court is aware of this, and has provided the parties an opportunity to further narrow the list of Subject Drugs.

16. If we were required to produce all of the documents Dey, Inc. has requested in its "narrowed" list, it would take in excess of 1,500 hours of work simply to gather and organize these documents. The cost of this hourly work alone amounts to \$79,500.

17. Compliance with this documentation request will also significantly compromise Tufts Health Plan's ability to successfully meet the deliverables and timeframes outlined above as well as jeopardize our ability to run our business effectively in the competitive environment in which we work.

Documents That Tufts Health Plan Offered to Produce

18. Assuming that certain conditions were met to address the confidentiality, cost, and timing problems posed by Dey, Inc.'s discovery requests, Tufts Health Plan offered to produce fee schedules and claims data for the physician administered drugs that appeared on Dey, Inc.'s "narrowed" drug list, as well as sample provider agreements.

19. Even this effort would require Tufts Health Plan to deflect approximately 400 hours of staff time to the retrieval and organization of documents, at a time when staff resources should be dedicated to the benefits compliance requirements described above. This effort alone would cost Tufts Health Plan \$58,000. The attorneys' fees involved in

reviewing documents and making assessments about confidentiality protection would be a cost to Tufts Health Plan in addition to the \$58,000 in the labor costs of retrieval.

Signed under the penalties of perjury this 1st day of February, 2006.

Miriam Sullivan
Miriam Sullivan
Assistant Vice President, Allied Health &
Pharmacy Services
Tufts Associated Health Plans, Inc.

Drug Name	Place of Service Pharmacy or Medical	J-Code
Procrit	Both	Q0136 Q4055 Q9920 Q9921 Q9922 Q9923 Q9924 Q9925
Sodium chloride	Both	Q9926 Q9927 Q9928 Q9929 Q9930 Q9931 Q9932 Q9933
Anzemet	Both	Q9934 Q9935 Q9936 Q9937 Q9938 Q9939 Q9940
Aranesp	Both	J2912 J7030 J7040 J7050 J7051 J7130
		J1260 Q0180
		J0880 Q0137 Q4054
Epogen	Both	Q1036 Q4055 Q9920 Q9921 Q9922 Q9923 Q9924 Q9925
Leucovor	Both	Q9926 Q9927 Q9928 Q9929 Q9930 Q9931 Q9932 Q9933
Leucovorin calcium	Both	Q9934 Q9935 Q9936 Q9937 Q9938 Q9939 Q9940
Methotrexate	Both	J0640
Neupogen	Both	J0640 J8999
Vancocin HCL	Both	J9250 J9260
Vancomycin HCL	Both	J1440 J1441
	Both Count	J3370
Alkeran	Medical	J3370
Blenoxane	Medical	J660 J9245
Cytoxan	Medical	J9040
Etopophos	Medical	J8530 J9090 J9091 J9093 J9094 J9095 J9096 J9097
		J9181 J9182
Integrelin	Medical	11
Navelbine	Medical	J1327
Paraplatin	Medical	J9390
Taxol	Medical	J9045
Vepesid	Medical	J9265
Zoladex	Medical	J8560 J9181 J9182
Adriamycin	Medical	J9202
Adrucil	Medical	J9001
A-Methapred	Medical	J9190
Amphocin	Medical	J2920
Amphotericin B	Medical	J0285 J0287 J0289
Bacteriostatic sodium chloride	Medical	J0285 J0287 J0289
Bebulin VH	Medical	J2912 J7130
Brevibloc	Medical	J7194
Buminate	Medical	J7799
Calcijex	Medical	P9041 P9042 P9045 P9046 P9047
Cefizox	Medical	J0635 J0636
Cisplatin	Medical	J0715
Claforan	Medical	J9060 J9062
Cytarabine	Medical	J9098 J9100 J9110 J9111 J9112 J9113
Depo testosterone cypionate	Medical	J1060 J1070 J1080 J1081 J1082
Dextrose	Medical	J7042 J7060 J7070
Doxorubicin HCL	Medical	J9000 J9001
DTIC-DOME	Medical	J9130 J9140
Etoposide	Medical	J9181 J9182
Ferrlecit	Medical	J2916
Gammimmune N	Medical	J1583 J1564 Q9943 Q9944
Gammagard SD	Medical	J1561 J1563 J1564 Q9941 Q9942
Gamma P	Medical	J1561 J1563 J1564 Q9941 Q9942
Gentran	Medical	J7100 J7110
Heparin	Medical	J1642 J1644
Infed	Medical	J1750
Iveegam	Medical	J1561 J1562 J1563 J1564 Q9941 Q9942
Koate-HP	Medical	J7190

Drug Name	Place of Service Pharmacy or Medical	J-Code
Kogenate	Medical	J7192
Leukine	Medical	J2820
Mithracin	Medical	J9270
Mitomycin	Medical	J9280 J9290 J9291
Neosar	Medical	J9070 J9080 J9090 J9091 J9092 J9095 J9096
Neulasta	Medical	J2505 Q4053
Novantrone	Medical	J9293
Osmirtrol	Medical	J2150
Recombinate	Medical	J7192
Sodium chloride	Medical	J2912 J7030 J7040 J7050 J7051 J7130
Solu-Cortef	Medical	J1700 J1710 J1720
Solu-Medrol	Medical	J1020 J1030 J1040 J2920 J2930 J7509
Taxotere	Medical	J9170
Thioplex	Medical	J9340
Tobramycin sulfate	Medical	J3260
Toposar	Medical	J9181 J9182
Vinblastine	Medical	J9360
Vincasar PFS	Medical	J9370 J9375 J9380
	Medical Count	
Albuterol	Pharmacy	J3535 J7613 J7619
Haldol	Pharmacy	J1630 J1631
Imitrex	Pharmacy	J3030
Intron A	Pharmacy	J9214
Kytril	Pharmacy	J1625 J1626 Q0166
Levaquin	Pharmacy	J1956
Myleran	Pharmacy	J8510
Perphenazine	Pharmacy	Q0175 Q0176
Proventil	Pharmacy	J7613 J7618
Pulmicort	Pharmacy	J7626
Remicade	Pharmacy	J1745
Retrovir	Pharmacy	J3485
Sporanox	Pharmacy	J1835
Temodar	Pharmacy	J8700
Ventolin	Pharmacy	J7620 J7625
Zantac	Pharmacy	J2780
Zofran	Pharmacy	J2405 Q0179
Zovirax	Pharmacy	Q4075
Acetylcysteine	Pharmacy	J7608 J7610 J7615
Acyclovir	Pharmacy	Q4075
Aggrastat	Pharmacy	J3245 J3246
Albuterol	Pharmacy	J3535 J7613 J7919
Aristocort	Pharmacy	J3302
Aristospan	Pharmacy	J3303
Ativan	Pharmacy	J2060
Azmacort	Pharmacy	J7684
Cipro	Pharmacy	J0706 J0744
Cromolyn sodium	Pharmacy	J7631
Dexamethasone	Pharmacy	J1100 J7637 J7638
Diazepam	Pharmacy	J3360
Dilantin	Pharmacy	J1165
Enbrel	Pharmacy	J1438
Fentanyl citrate	Pharmacy	J3010
Furosemide	Pharmacy	J1940
Gentamicin	Pharmacy	J1580

Drug Name	Place of Service Pharmacy or Medical	J-Code
Intal	Pharmacy	J7631
Ipratropium bromide	Pharmacy	J7644
Lorazepam	Pharmacy	J2060
Metaproterenol sulfate	Pharmacy	J7669
Miacalcin	Pharmacy	J0630
Prograf	Pharmacy	J7507 J7508 J7525
Zithromax	Pharmacy	J0458

Pharmacy Count

Grand Count

42

109